

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5783 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
Nos. 1 to 5 No

JAYANTILAL VALLABHBHAI PATEL

Versus

COMMISSIONER OF POLICE

Appearance:

MR ANIL S DAVE for Petitioner

MISS.SIDDHI TALATI,AGP for Respondents.

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 02/12/98

ORAL JUDGEMENT

This writ petition under Article 226 of the Constitution of India has been filed praying for a writ of certiorari quashing the detention order dated 15.4.1998 and for a writ of habeas corpus for immediate release of the petitioner from illegal custody.

The brief facts are that the Detaining Authority

after considering the report of the sponsoring authority, of the registered case against him under Indian Penal Code as well as considering the statements of witnesses came to the conclusion that the petitioner is a dangerous person and his activities are prejudicial to maintenance of public order. Alternative remedies under the general law were also considered by the Detaining Authority viz. action under sections 107 and 110 Cr.P.C. and sections 56 & 57 of the Bombay Police Act and found that such remedies were inefficacious for preventing activities of the petitioner which were highly prejudicial to maintenance of public order. Accordingly, impugned order under section 3(2) PAsA Act, 1985 was passed which is under challenge in this writ petition.

Learned Counsel for the petitioner has challenged the impugned order only on one ground that the representation of the detenu sent through his Advocate was not considered by the State Government but was returned to the Advocate of the detenu asking to obtain signature or thumb impression of the detenu and/or to file vakalatnama etc. from the detenu.

So far as the grounds of detention are concerned they require no interference. The Detaining Authority has rightly come to the conclusion that the petitioner's activities fall within the definition of section 2(C) of the PAsA Act and he is a dangerous person. From the statement of the witnesses he rightly came to the conclusion that the incident narrated by the witnesses certainly created disturbance of public order. Those witnesses did not disclose their identity due to fear of the petitioner who extended threat to the witnesses in the company of his companions even to the extent of danger to the lives of the witnesses. In those incidents the persons who collected at the spot were fear stricken in as much as companions of the petitioner went towards them with fatal weapons giving threats to their lives. Shops were closed in the locality. The people ran from the spot to save their lives. In this way public order was disturbed. Thus, the petitioner is not only a dangerous person but also his activities created disturbance in public order. The detention order was therefore rightly passed.

However, this detention order cannot be sustained due to inaction of the State Government. The contention is that the representation of the detenu sent by the Advocate was not considered by the State Government, rather, it was returned on 24.7.1998, in as much as it was not bearing signature or thumb impression of the

detenu. In para 2 of the affidavit of Shri J.R.Rajput, Under Secretary of the Government of Gujarat, it is admitted that the representation dated 23.7.1998 signed by the Advocate of the detenu addressed to the Home Minister of the State was received in the office which was forwarded to the Home Department on 24.7.1998. With great promptness this representation was returned to the Advocate of the detenu for compliance, because it was not bearing signature or thumb impression of the detenu. This attitude of the Home Department of the State of Gujarat has not been appreciated by me in several cases decided by me under PASA. This action of the Home Department is patently contrary to the Apex Court's verdict in Balchand Chorasias, Vs. Union of India AIR 1978 SC 297. If the representation was sent by the Advocate intimating that it was being sent under instructions of the detenu, the Home Department of the State of Gujarat had no business to doubt the said declaration in the representation. The counter affidavit of Shri J.R.Rajput does not mention that the representation did not disclose that it was sent under the authority from the detenu. The Advocate could not be asked to obtain thumb impression or signature of the detenu. This technicality of the State Government has rendered the detention of the petitioner as well as his continued detention illegal despite the fact that it was a fit case for confirming the detention order.

For the reasons stated above the writ petition succeeds and is hereby allowed. The impugned order of detention dated 15.4.1998 is quashed. The petitioner shall be released from custody forthwith unless he is wanted in connection with some other criminal case.

(D.C.Srivastava, J)

m.m.bhatt